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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

[1]Initial reports of States parties due in 1988

Addendum

URUGUAY

[6 June 1991]

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Part I

INFORMATION OF A GENERAL NATURE

A. Current legal framework

1. The current legal system of the Eastern Republic of Uruguay comprises a coherent series of rules of different rank and with different spheres of application, in conformity with the directives contained in the present Constitution, which was adopted in 1966.

2. International treaties, which the Executive Power is responsible for concluding and signing, are approved by Parliament, and, once promulgated, become general legal rules, with the force of law in Uruguay. Once the rights and obligations flowing from an international treaty have been officially adopted by Uruguay in accordance with current rules, they may be directly invoked before the courts, as is confirmed by the practice of the Uruguayan courts (see annexes I and II).

3. At present there is no specific offence designated as "torture" under domestic law. However, as is explained below, the current legal system provides sufficient guarantees to ensure that actions of the type internationally defined as torture constitute a serious offence that must automatically be prosecuted under domestic law.

B. Rights, duties and guarantees contained in the Constitution

4. The current set of rules contained in Section II under the title of "Rights, duties and obligations", was incorporated into Uruguay's Constitution in 1934. In that connection reliable historical accounts of the adoption of the Constitution show that its authors when drafting it had in mind, in particular, the Constitution of Mexico (1917), the Constitution of the German Weimar Republic and the second Spanish Constitution.

5. The basic provisions are contained in the following articles of the Constitution:

Article 7

> "The inhabitants of the Republic have the right of protection in the enjoyment of life, honour, liberty, security, labour and property. No one may be deprived of these rights except in conformity with laws which may be adopted for reasons of general interest."

Article 12

> "No one may be punished or imprisoned without due process of law and sentence."

Article 13

> "Ordinary law may establish trial by jury in criminal cases."

Article 14

"The penalty of confiscation of property may not be imposed for reasons of a political nature."

Article 26

"The death penalty shall not be applied to anyone. In no case shall brutal treatment be allowed in prison; they shall be used only as a means of assuring that convicts and prisoners are re-educated, acquire an aptitude for work and become rehabilitated."

Article 72

"The enumeration of rights, duties and guarantees made in the Constitution does not exclude others which are inherent in the human being or derive from the republican form of government."

Article 332

"The provisions of the present Constitution that recognize individual rights, as well as those that confer powers and impose duties on public authorities, shall not fail to be given effect by reason of the lack of corresponding regulations, but any such lack shall be made good by application of the basic features of analogous laws, general principles of law, and generally accepted legal doctrine."

C. Provisions of the Penal Code

1. Introduction

6. In Uruguay's legislative history from the time its institutions were first organized until the present, the provisions of criminal law have been systematized in two bodies of law: the 1889 Penal Code and the current Penal Code, which came into force through Act No. 9,414 of 29 June 1934.

7. The current Penal Code, together with the amendments made to it with the passage of time, comprises three volumes. Volume I, entitled "General Section", comprises the following eight titles:

Title I - Offences;

Title II - Grounds for exemption from penalty;

Title III - Aggravating and mitigating circumstances;

Title IV - Concurrence of offences and offenders;

Title V - Penalties

Title VI - Security measures

Title VII - The civil consequences of offences;

Title VIII - Abatement of offences and penalties.

Book II, entitled "Offences" contains the following 13 titles:

Title I - Offences against the sovereignty of the State, of foreign States, or against their leaders or representatives;

Title II - Offences against the State;

Title III - Offences against public order;

Title IV - Offences against the public administration;

Title V - Offences affecting the administration of justice;

Title VI - Offences against public safety;

Title VII - Offences against public health;

Title VIII - Offences involving breach of public trust;

Title IX - Offences against the economy and public property;

Title X - Offences against public morals and the family;

Title XI - Offences against liberty;

Title XII - Offences against the physical and moral integrity of individuals;

Title XIII - Offences against property.

Book III is entitled "Minor offences".

2. Forms of conduct punishable under domestic law pertaining to general offences that could be applied to cases of torture

8. Book II, Title III, Offences against public order.

Article 147: Public incitement to commit an offence

"Whosoever publicly incites persons to commit an offence shall be punished for the mere act of incitement by from 3 to 24 months' ordinary imprisonment."

Article 150: Criminal conspiracy

"Persons who conspire for criminal purposes shall be punished for the mere act of such conspiracy by from six months' ordinary imprisonment to five years' rigorous imprisonment."

Article 152: Exceptions to the rules relating to criminal conspiracy

"Any assistance given to a criminal conspiracy which is likely to benefit its activities, its maintenance or its freedom from punishment, with the

exception of actual aiding and abetting, shall be punished by from 3 to 18 months' ordinary imprisonment."

9. Book II, Title IV, Offences against the public administration, Chapter II, Abuse of authority and violation of the responsibilities inherent in public office.

Article 162: Abuse of office in cases not specifically provided for by law

"Any public official who abuses his office to commit or order to be committed an arbitrary act detrimental to the administration or to individuals and for which no specific provision is made in the Code, shall be punished by from 3 to 24 months' ordinary imprisonment and 2 to 6 years' specific disqualification."

10. Book II, Title XI - Offences against liberty.

Article 286: Abuse of authority against prisoners

"Any public official responsible for the administration of a prison, for the custody or transfer of a person under arrest or convicted, who commits arbitrary acts against such a person or subjects him to punishment that is not authorized by the regulations, shall be punished by from six months' ordinary imprisonment to two years' rigorous imprisonment."

11. Book II, Title XII - Offences against the physical and moral integrity of the person.

Article 310: Homicide

"Whosoever wilfully kills another person shall be punished by from 20 months' ordinary imprisonment to 12 years' rigorous imprisonment." (See annex III)

Article 312: Particular aggravating circumstances

"A sentence of from 15 to 30 years' rigorous imprisonment shall apply if the homicide was committed:

1. in a manner that involves brutal savagery or grievous cruelty;

2. by the use of pressure or the promise of gain;

3. by means of fire, flood, drowning or any other of the offences set out in article 47, paragraph 3;

4. to prepare, facilitate or ensure the completion of another offence, even if the offence in question has not been committed;

5. immediately after the committing another offence, to ensure its success, or because of failure to achieve its objective, or to conceal it, to suppress evidence or proof, to ensure impunity for its perpetrator or for any of the persons involved in its commission;

6. persistent commission of offences, concurrence of offences and recidivism, in the latter two cases, if the previous homicide was committed in the absence of the circumstances described in paragraph 4 of the previous article."

Article 316: Injury

"Whosoever without intending to kill, causes injury to the person of another individual shall be punished by from 3 to 12 months' ordinary imprisonment. Injury to the person shall mean any physiological disorder leading to physical or mental illness."

Article 317: Serious injury

"The injury to the person described in the previous article shall be classified as serious and shall be liable to a penalty of from 20 months' ordinary imprisonment to 6 years' rigorous imprisonment if it leads to the following:

1. any illness that threatens the life of the victim or that incapacitates him from performing his ordinary activities for more than 20 days;

2. permanent injury to a sense or to an organ;

3. premature delivery by a female victim."

Article 318: Extremely serious injury

"Personal injury shall be classified as extremely serious and shall be liable to a sentence of from 20 months' ordinary imprisonment to 8 years' rigorous imprisonment if it has led to the following:

1. an illness that is certainly or probably incurable;

2. the loss of one of the senses;

3. the loss of a limb or a mutilation rendering it useless, the loss of an organ or of the capacity to reproduce, or serious and permanent damage to the power of speech;

4. permanent facial damage;

5. miscarriage by a female victim."

Article 320: Special aggravating circumstances

"If the offence has been committed by the public officials referred to in article 286, against the victims described therein, the penalty shall be increased by one third."

Article 175: Definition of the term "official"

"For the purposes of this Code, the term 'official' shall designate all those who perform, for pay or in an honorary capacity, a permanent or temporary legislative, administrative or judicial function within the State, a municipality or any public body."

Article 176: Effect of cessation of official status

"If the law considers status as a public official to be a constituent or aggravating factor in an offence, this shall not be affected by the fact that the official status does not obtain at the time the offence is committed, if its existence is recognized as relevant."

D. Principles governing the prison system

12. The guiding principles of the prison system appear in Act No. 14,470, dated 11 December 1975. The following articles are relevant:

Article 1:

"During the serving of custodial sentences, efforts shall simultaneously be made to develop the prisoner's aptitude for work, to bring about his social rehabilitation and to prevent crime. In no case shall detention be used to torture, ill-treat or inflict suffering on a prisoner, or to perform acts or employ procedures designed to harass or humiliate him (Constitution, article 26)."

Article 7:

"Any form of cruel, inhuman or degrading treatment as a corrective measure shall be prohibited. Means of restraint may only be employed in the case of attempted escape or violent resistance or if there is well-founded cause to fear that the prisoner may lay hands on himself or another person."

Article 8:

"Prisoners shall be treated in a strictly impartial manner, without distinction on the grounds of colour, race, religion, social and economic status or the like."

Article 27:

"No pregnant prisoner may be required to work or to perform any other activity incompatible with her condition for a period of 45 days before the date of delivery and 45 days after it, or whenever medical indications so dictate.

After delivery, while the mother is caring for her child, she shall be relieved of any activity that prevents her from giving her child proper attention."

Article 28:

"No corrective disciplinary measure may be enforced if there are medical grounds to believe it may affect the health of the prisoner or of her unborn child or nursling. The corrective disciplinary measures which would otherwise have been applied shall be recorded on the prisoner's conduct sheet."

E. Authorities with jurisdiction over complaints of torture

13. The authorities with jurisdiction over cases that have arisen from complaints of offences involving torture or other cruel, inhuman or degrading treatment are the following, as appropriate: the judiciary (the criminal or civil courts), the courts of compensation for material injury, the military courts and, in cases involving extradition, the Ministry of Foreign Affairs and the Supreme Court.

1. The judiciary: the criminal courts

14. The criminal courts comprise the criminal courts of first instance of the capital and the departmental courts of first instance, who assume jurisdiction over criminal cases brought on the grounds of torture. In accordance with the material or objective grounds, these courts hear the whole of the criminal proceedings (inquiry proceedings, pre-trial proceedings and trial proceedings) and order all the necessary procedural steps connected with acts classifiable as torture committed within their jurisdiction. The jurisdictions are: the Department of Montevideo (criminal courts of first instance) or another department in the interior (departmental courts).

15. Appeals are heard by the Criminal Courts of Appeal. These collegiate bodies, comprised of several magistrates, hear in the second and final instance cases relating to decisions taken by the criminal courts mentioned above. Their jurisdiction extends throughout the country and they hear all appeals, with the exception of those heard by the Supreme Court, by virtue of its original and exclusive jurisdiction over them.

2. The judiciary: civil courts

16. The civil courts comprise the civil courts of the first instance of the capital and the departmental courts of the first instance with jurisdiction over all the civil aspects of the offence (Penal Code, art. 104 et seq.). Under Uruguay's criminal law, any offence that directly or indirectly causes a material injury consequently involves civil liability. The criminal indemnification action and the criminal action based on the same unlawful act must be brought, ratione materiae, before the relevant courts (Code of Criminal Procedure, art. 27).

17. If the criminal indemnification proceedings are filed before a final judgement has been made in the criminal court, the civil proceedings are held

in abeyance until the criminal sentence has been handed down. Once sentence has been passed, the fact is attested, and the civil court takes the appropriate decision. An acquittal or a dismissal of proceedings quashes any civil indemnification action based on the offence. However, this does not apply to any actions the victim may bring under civil law. A pardon extinguishes the offence but not the criminal indemnification action to which the act might give rise (Code of Penal Procedure, art. 29).

3. Compensation for material injury

18. Under articles 24 and 25 of the Constitution, the State, the departmental Governments, the autonomous bodies, the decentralized departments and any State organ in general bear civil liability for the injury caused to third parties by the public services under their administration or management.

19. If the injury has been caused by public officials in the performance of their duties or in connection therewith, and the said officials have committed a gross negligence or misconduct, the appropriate public body may claim from them damages equivalent to those it has itself paid.

20. Accordingly, the appropriate action for compensation for material injury lies with the Administrative Court in cases involving State responsibility, by reason of an act or omission of an official who has wilfully caused injury. State responsibility is without prejudice to any proceedings that might be taken against the official involved (see Annex IV).

4. Special courts: military courts

21. Article 253 of the Constitution provides as follows:

> "Military jurisdiction shall be limited to military offences and to a state of war. Ordinary offences committed by personnel in peacetime shall come under the jurisdiction of the ordinary courts, regardless of where they are committed."

22. Article 4: Military criminal jurisdiction

> "Military jurisdiction shall extend to military and paramilitary personnel who commit a military offence. It shall also extend to persons outside the army, the navy and the air force who are coperpetrators of, or accessories to, a military offence committed by military personnel."

23. The organization of military courts is governed by article 72:

> "Naval or wartime jurisdiction is exercised in peacetime:
>
> 1. by the Supreme Court composed as provided by the Code of Military Procedure;
>
> 2. by the Supreme Military Court;
>
> 3. by the military judges of first instance;

4. by the military examining magistrates;

5. by the military prosecutors and the examining magistrates."

24. With regard to offences that undermine the morale of the Army or the Navy (Air Force), article 58 stipulates as follows:

"Any military or paramilitary personnel or persons outside the Army and Navy (Air Force) as the case may be, who commit any of the following offences shall be deemed to have sought to undermine the morale of the aforesaid branches of the armed forces:

...

8. Breach of the prerogatives to which a prisoner of war is entitled and that pertain to his material well-being (the right to physical integrity, to salubrious housing and food) or safeguard his moral integrity."

5. Extradition

25. Applications for the extradition of a person accused of the offence internationally classified as torture are dealt with by the Ministry of Foreign Affairs, the Supreme Court and the competent judge (see Annex V).

26. In this respect, the Penal Code makes the following provision, in book I, chapter II entitled "Enforcement of criminal laws":

Article 9: Criminal law and territorial jurisdiction

"Offences committed on the territory of the Republic shall be punished in accordance with Uruguayan law, regardless of whether the perpetrator is a Uruguayan national or a foreigner, without prejudice to the exceptions laid down by domestic public law or by international law.

If a person has been convicted abroad for an offence committed in Uruguay, the sentence served, in full or in part, shall be taken into account in the application of a new sentence."

Article 10: Penal law: the principle of defence and legal personality

"Uruguayan law shall not apply to offences committed by Uruguayan nationals or foreigners on foreign territory, with the following exceptions:

1. Offences against State security;

2. Offences involving the forging of the State seal or the use of a forged State seal;

3. The forging of national currency or of national public credit documents;

4. Offences committed by a Uruguayan national and punishable both under foreign and national law, if the perpetrator is an inhabitant of the Republic and his extradition has not been requested by the authorities of the country in which he committed the offence; in such cases the most lenient law shall apply;

5. Offences committed by officials in the service of the Republic, involving an abuse of their authority or a violation of the duties inherent to their position;

6. Offences committed by foreigners to the detriment of a Uruguayan national or to the detriment of Uruguay, subject to the provisions of the previous paragraph, and provided the circumstances set out therein are met;

7. All other offences subject to Uruguayan law under specific domestic provisions or under the provisions of international conventions."

Article 13:

"Extradition shall not apply to political offences, ordinary offences connected with political offences or to ordinary offences punished on political grounds.

Nor shall extradition apply if the act for which it is requested does not constitute an offence under Uruguayan law.

Extradition may be granted or proposed for offences not covered by treaties, provided there is no prohibition in respect thereof."

Article 14: Conditions that apply to extradition in the absence of a treaty

"In the absence of a treaty, a foreigner may only be extradited subject to the following conditions:

1. The offences in question must be liable to a penalty, pursuant to this Code, of rigorous imprisonment for an unspecified period or for over six years.

2. The application must be submitted by the Government concerned to the Executive Power together with the sentence or detention order and the documents required by Uruguayan law to justify the arrest.

3. A judicial decision approving the extradition must have been taken, after a hearing of the accused and of the public prosecutor."

This latter requirement has been partly amended by article 32 of the Code of Penal Procedure as follows:

Code of Criminal Procedure: Article 32

"Where no treaty is applicable, extradition may be granted only subject to the following rules:

1. The offences involved must be punishable with a penalty of not less than two years' rigorous imprisonment;

2. The request for extradition must be submitted by the requesting Government to the Executive Power, together with the sentence or the arrest warrant and the supporting documents required by the laws of the Republic if arrest is to be made;

3. There must be a judicial decision approving the extradition, after a hearing of the accused and the Public Prosecutor for criminal matters."

F. Remedies available to the victim of torture or his legal representatives

27. With regard to the legal remedies available to a victim of torture or other cruel, inhuman or degrading treatment or punishment, mention must be made, first of all, of proceedings that can be taken under the provisions of substantive criminal law applicable throughout the territory of the Republic. In accordance with article 10 of the Code of Criminal Procedure, criminal proceedings are public and these offences can be automatically prosecuted upon indictment by the Public Prosecutor's Office (art. 23 of the Code of Criminal Procedure). Article 23 of the Constitution states:

"All judges are responsible before the law for the slightest infringement of the rights of individuals as well as for deviation from the established order of procedure in that respect".

G. Judicial safeguards at the stage of investigation

28. Article 176 of the Code of Criminal Procedure lays down the safeguards applicable at the stage of investigation and specifies as follows:

Article 176: Physical and mental examination

"The judge, whenever he considers it necessary, may order an examination of the physical and mental state of the accused. The judge may also order the same measure with regard to another person, in case of serious and well-founded suspicion or of real necessity. Whenever specialized knowledge is required the examination shall be carried out with the assistance of experts."

This obligation laid on the judge dealing with the case shall remain in force throughout the serving of the sentence.

29. Article 317 of the Code of Criminal Procedure (Purpose of imprisonment) reads as follows:

> "In carrying out the provisions of the foregoing articles, the judge shall ensure that imprisonment shall in no case serve to harass the prisoner, but only to rehabilitate him, promote his aptitude for work and ensure that he does not commit further offences (cf. art. 26 of the Constitution). To that end, the documentation referred to in paragraph 2 of the previous article shall record the judge's remarks and any claims or complaints addressed to him. In all cases, the clerk of court shall be in attendance".

H. Judicial safeguards during the serving of the sentence

30. Article 316 (Supervision of the serving of the sentence):

> "The judges responsible for supervision shall:
>
> 1. look after the case files until the prisoner has served out his sentence;
>
> 2. visit at least once a year the institution to which the prisoner has been committed, for the purposes specified in the previous article, having first examined the appropriate files; the whole procedure shall be placed on record. Without prejudice to the foregoing, the judges may carry out inspections whenever they deem it advisable."

I. Habeas corpus and amparo remedies

31. The many essential safeguards available to the victim, his legal representatives or his assigns obviously include the remedy of habeas corpus.

Article 17:

> "In the event of unlawful imprisonment any person may enter before the competent judge a writ of habeas corpus to impel the arresting authority to explain and justify the legal grounds for the arrest, the decision lying with said judge."

32. Uruguay welcomes wholeheartedly the pronouncement by the Inter-American Court of Human Rights in its Advisory Opinion OC 8 87 of 30 January 1987 when it states as follows:

> "The remedy of habeas corpus may not be suspended, even in emergency situations; as has been stated, the immediate purpose of this remedy is to ensure that the person of the detainee is placed at the disposal of the judges so that they can satisfy themselves that he is alive and is not undergoing torture or physical or psychological pressure, a point which it is important to stress bearing in mind that the right to physical integrity recognized in article 5 of the American Convention on Human Rights is one of those rights that may not be suspended under any circumstances."

33. For its part, Act No. 16,011 of 19 December 1988 governs the remedy of amparo in the Eastern Republic of Uruguay. This provision envisages the remedy of amparo as an action intended for the defence of the rights and freedoms expressly or implicitly recognized by the Constitution, except in those cases in which the remedy of habeas corpus may be invoked.

34. Article 1 of the Act provides as follows:

> "Any natural or juridical, public or private, person may enter an action of amparo against any act or omission of a State or para-State authority, or of any private individual, that in the applicant's judgement, actually or potentially infringes, restricts, alters or threatens in a manifestly unlawful manner any of his rights and liberties expressly or implicitly recognized by the Constitution (art. 72) otherwise than in those cases in which the remedy of habeas corpus may be invoked ... ."

35. Article 2 states:

> "The remedy of amparo shall only be admissible if there do not exist any other judicial or administrative remedies that make it possible to obtain the same result as that specified in article 9 B or when, if such remedies exist, they have proved in the given circumstances clearly ineffective for the protection of the right in question. If the application is manifestly not admissible, the judge shall reject it without trying the case and shall order the documents to be filed away."

36. When the proceedings are launched, a hearing will be arranged to examine the explanations of the defendant, consider the evidence and listen to the submission. The decision must be rendered at the hearing itself or within the following 24 hours. The decision shall be open to appeal but the lodging of an appeal shall not have a suspensive effect on any interim measures adopted. In order to ensure speedy proceedings, no prior issues, counter-claims or interlocutory matters shall be admitted (see annex VI).

J. The present situation

37. The Government of Uruguay signed the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 4 February 1985. It had received Parliamentary approval under Act No. 15,798 of 17 December 1985 and the instrument of ratification was deposited on 24 October 1986. The text of this Convention was accepted by our country without any reservation.

38. Subsequently, the Republic of Uruguay has recognized the competence of the Committee against Torture to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Convention. For the time being, the crime of torture has not been defined as a separate offence in Uruguayan law but the types of conduct described by the international Convention nevertheless constitute offences and are severely punished by the Uruguayan judiciary.

PART II

INFORMATION RELATING TO EACH OF THE ARTICLES IN PART I OF THE CONVENTION

Article 1

39. In conformity with what has been stated in earlier paragraphs, to which we refer, upon the Republic of Uruguay becoming a Party to the Convention, the unlawful behaviour classified as the international offence of torture became an additional part of Uruguayan criminological typology.

40. Thus, when the constituent elements of the unlawful behaviour match the type of crime described internationally, the national courts try the perpetrator in accordance with a relevant degree of participation and apply the penalty appropriate to the harm inflicted (homicide, extremely serious injury, serious injury, negligence, irregularity).

41. A copy is attached as Annex 7 hereto of Judgement No. 10,559 handed down by the First Rota Criminal Court of Appeals which, upon assessing the weight of the circumstantial evidence furnished by the victim and making its own direct evaluation of the case, prosecuted police officials for abuse of authority against the detainees.

Article 2

42. As part of the measures adopted by the democratic Government with a view to disseminating knowledge of the international instruments for the protection of the human person, the Ministry of the Interior has instructed the Chiefs of Police to include in the training programmes of police and prison staff the Code of Conduct for Law Enforcement Officials (resolution 34/169 of 17 December 1979) as well as a general and up-to-date course of study on the human rights instruments to which the Republic is a party.

43. In this context, during the month of July 1990, the First National Training Course on the Application of the Human Rights Instruments in the Administration of Justice was held with the technical assistance of the United Nations Centre for Human Rights. The course was intended for field officers of the Ministry of the Interior concerned with prisons and security as well as for the technical personnel of the prisons system, members of the judiciary and judicial marshals. The course was concerned mainly with considering the theme of "torture" both from the point of view of the universal and regional human rights instruments and from that of the relation of those instruments with domestic law and with contemporary police practice arising therefrom.

44. As regards the teaching of civics, the National Primary Education Board, with the cooperation of the Inter-American institute of Human Rights has developed since 1986 a "Pilot Project on the Teaching of Human Rights in Primary Schools". At present, 57 Uruguayan schools, attended by 22,863 children between 4 and 11 years of age, are participating in this project, which is comprehensive in approach, and deals with the theme of human rights in increasing detail from the pre-school level (initial education) up to the higher educational levels.

45. At the level of higher education, the University of the Republic has established a university course on human rights for those studying to be lawyers, registrars and graduates in international relations. For its part, the Catholic University of Uruguay (the only private university in the country) has had a course of human rights as part of law studies ever since it opened in 1986.

Article 2, paragraph 2

46. Article 31 of the Constitution provides as follows:

> "Individual security may not be suspended except with the consent of Parliament or, if this has been dissolved or is in recess, the Permanent Commission, and in the event of an extraordinary case of treason or conspiracy against the country, and even then such suspension may be used only for the apprehension of the guilty parties, without prejudice to the provisions of section 17 of article 168."

Article 168 of the Constitution specifies as follows:

> "The President of the Republic, acting with the respective minister or ministers, or with the Council of Ministers, has the following duties:
>
> ...
>
> 17. To take prompt measures of security in grave and unforeseen cases of foreign attack or internal disorder, giving an account within 24 hours to a joint session of the two chambers of Parliament, or during its recess to the Permanent Commission, of the action taken and its motives, the decision of the latter bodies being final.
>
> With respect to persons, the prompt measures of security authorize only their arrest or removal from one place in the territory of the country to another, provided they do not elect to leave it. This measure, like the others, must be submitted within 24 hours to a joint session of the two Chambers of Parliament or to the Permanent Commission, which will take the final decision.
>
> The detention shall not be at a place intended for the incarceration of criminals."

47. In accordance with Uruguayan law, in the event of an emergency due to very special circumstances, the Constitution thus allows the suspension of security of person. The measures taken, however, must only be of very brief duration and are subject to strict parliamentary control. The measures adopted cannot serve as a pretext to commit abuses against the physical integrity of the detainees.

Article 2, paragraph 3

48. Chapter 1 of Title II of the ordinary Criminal Code of Uruguay lists obedience to lawful orders among the grounds of exoneration from punishment. Article 29 (obedience to a superior) provides as follows:

> "The performance of an act of lawful obedience constitutes grounds of exoneration from criminal liability.
>
> Obedience shall be deemed lawful where all the following conditions apply concurrently:
>
> 1. the order must emanate from an authority;
>
> 2. the authority concerned must be competent to give the order; and
>
> 3. the subordinate must be under a duty to carry out the order.
>
> Any error on the subordinate's part regarding the existence of that duty shall be weighed by the judge in the light of the subordinate's administrative rank, his level of education and the gravity of the offence."

49. For its part, the Military Criminal Code (Chapter V) provides as follows in its article 17:

> "Should a member of the armed forces commit an offence while on duty on orders from above, it shall be presumed that the circumstances specified in article 29 of the ordinary Criminal Code apply to him, saving evidence to the contrary."

50. From what has been just stated, it follows that, under Uruguayan domestic law, obedience to orders has the effect of exonerating the person carrying them out from liability, because the element of unlawfulness, which is an essential feature of all criminal offences, is presumed to be lacking. Nevertheless, Uruguayan legal thinking, following in this respect the most authoritative opinions on penal law, agrees in asserting that a lawful order (lawful because emanating from a competent authority acting within its competence) that has an unlawful content (for example, an order to commit an offence such as torture) must not be automatically obeyed by a subordinate, who is under a legal duty to examine, and resist, the order that has an unlawful content and to denounce the instigator who is his superior.

51. In any event, because of the entry into force for Uruguay of the International Convention Against Torture without reservation to any of its provisions, article 2, paragraph 3 of the said international instrument will have superseded the above-mentioned provision of domestic law, in accordance with the principle of speciality (specialia generalibus derogant).

Article 3

52. Uruguayan legal opinion fully recognizes, and has done so for a long time, the principle of non-refoulement at the frontier for persons in respect of whom there are well-founded grounds to fear for their lives, freedom or physical integrity. In this respect, at the international level Uruguay is a party to the Convention relating to the Status of Refugees adopted on 28 July 1951 and the Protocol relating to the Status of Refugees adopted by resolution 2198 (XXI) of 16 December 1966. The principle of non-refoulement, which has also been endorsed by many pronouncements elsewhere than in treaties (e.g. Declaration on Territorial Asylum adopted by resolution 2312 (XXII) of 14 December 1967) has accordingly been adopted by Uruguayan practice in the matter.

53. The frontiers of Uruguay have always offered a subsidiary protection to those aliens who are fleeing the country of which they are nationals or in which they have domicile or residence for political reasons or because of discrimination. In this context, whether it is well-known politicians in flight from their country as a result of internal disturbances or ordinary citizens escaping from a country in which there are systematic violations of human rights that endanger their security, all receive adequate protection in Uruguay and the fact that they have entered the country illegally or clandestinely has never been made a pretext to return them to the countries from which they come and where their basic rights may be infringed.

Article 4

54. With regard to paragraph 1 of article 4, please consider the legal provisions enumerated in the first part of the present report as deemed to be repeated here. With regard to the punishable character of the commission of the acts described as torture, it must be pointed out that these acts in themselves attract the heaviest penalties in our legal system. Article 66 et seq. of the Criminal Code lists the following main penalties:

(i) rigorous imprisonment (2 to 30 years);

(ii) ordinary imprisonment (3 months to 2 years);

(iii) general disqualification from holding public office and from the exercise of political rights (2 to 10 years);

(iv) specific disqualification from the exercise of a particular academic, commercial or industrial profession;

(v) suspension from post or public office or from the exercise of an academic, commercial or industrial profession (6 months to 2 years);

(vi) fines.

Article 5

55. The rule embodied in article 5 of the Convention is in full conformity with the relevant provision in Title III, chapter II of our Code of Criminal Procedure, which states:

> "Article 31 (Classes of jurisdiction)
>
> National criminal jurisdiction is either ordinary or special and extends to all offences, major and minor, committed on national territory as well as those committed abroad in the cases specified by law or by treaty.
>
> Ordinary jurisdiction shall mean the jurisdiction vested in the judges and courts of the ordinary judicial system to which this Code refers; special jurisdiction shall mean the jurisdiction vested in organs outside that system."

56. For its part, the spatial application of the law has been dealt with in many different ways both in legal writings and in positive international law. In conformity with the relevant treaty provision, our ordinary Criminal Code conveniently combines the three criteria of territoriality, personality and defence in articles 9 and 10 reproduced above.

Articles 6, 7, 8 and 9

57. Since the nineteenth century, our domestic legislation has incorporated the fundamental provisions established in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The pre-trial detention of a person accused of an offence is thus admissible if he is found on the national territory provided that by administrative, postal or telegraphic means, the requesting State produces an arrest warrant issued by the competent judge. Pre-trial imprisonment shall be for a reasonable period, taking into consideration the circumstances of the case and shall continue until criminal proceedings have been launched or until the request for extradition has been received.

58. Extradition shall not be admissible for political offences or for offences under the ordinary law that are related to political offences or for offences under the ordinary law, punishment for which would pursue political ends. Nor is extradition admissible, when the act which constituted the grounds for the extradition request is not characterized as an offence in the national legislation. However, this condition should be analysed as being based on having within it elements that constitute as offence and not as corresponding exactly to the definitions of the type of penal offence concerned.

59. The only absolute prerequisite established in our legal system for compliance with an extradition request is that the elements constituting the offence should be subject to a sanction with penalties characterized as serious (two years of rigorous imprisonment) by the court which establishes that an offence has been committed. If the extradition request cannot be

accepted because of alleged procedural irregularities or of substantive objections that run counter to public policy, the Government of Uruguay is obliged to prosecute the accused and notify the requesting State of the outcome of the prosecution proceedings.

60. Throughout its history, at the international level, Uruguay has signed many bilateral extradition treaties. Because of its physical proximity to Argentina and to other "Southern Cone" countries, extradition agreements constitute a significant part of Uruguay's judicial cooperation with other countries. Some of the most important bilateral instruments concerning extradition are as follows:

(a) The 1940 treaty concerning penal law;

(b) The Convention on the Prevention and Punishment of the Crime of Genocide adopted by Act No. 13,462 of 7 July 1966;

(c) The Convention between the Eastern Republic of Uruguay and the Republic of Argentina on the Exchange of Criminal Records, adopted by Act No. 15,057 of 30 September 1980;

(d) Convention on the International Protection of Minors between the Eastern Republic of Uruguay and the Republic of Argentina, adopted by Act No. 15,218 of 20 November 1981;

(e) Convention on the Exchange of Criminal Records between the Government of the Eastern Republic of Uruguay and the Republic of Chile, adopted by Act No. 15,249 of 26 March 1982;

(f) Convention on Equality in the matter of Treatment in Judicial Proceedings and Charges between the Government of the Eastern Republic of Uruguay and the Government of the Republic of Chile adopted by Act No. 15,251 of 26 March 1982;

(g) Signatory to the Inter-American Convention on Extradition of 25 February 1981, which is now in the process of being ratified.

61. Since the entry into force in Uruguay of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, on 7 October 1981, the Government has signed a new bilateral extradition treaty with Australia, article 17 of which is entitled "Multilateral obligations", and reads: "This treaty shall not affect any obligations which the States parties have contracted or may contract in the future, under any multilateral convention".

Articles 10 and 11

62. The treatment of prisoners has changed radically since 1985 and the Prison Training School has now decided to include formal courses on custody and technology in the training programme of prison officers. Accordingly, the

prison officers are given training on the United Nations Standard Minimum Rules for the Treatment of Prisoners adopted at the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1955 and on the human rights instruments; the training is dynamic and flexible, because the courses are adapted to the generally low intellectual level of the officers.

63. The National Police School also trains its cadets in elementary human rights standards (see annex IX). The Government of Uruguay, out of a concern to ensure the ongoing education of the officers responsible for the custody, questioning and treatment of prisoners, plans to hold regular courses on these subjects. (In this connection, please see the conclusions of the first national training course on the implementation of international human rights instruments, held in Montevideo from 9 to 13 July 1990).

Articles 12 and 13

64. There are three procedures by which an individual may report acts of torture or other cruel, inhuman or degrading treatment or punishment: by making a report to the police, by an indictment, by bringing a court charge.

Report to the police

65. The individual shall make a report to the police officers or clerks who must promptly and urgently start a criminal investigation and submit the complaint to the competent judge, who shall begin investigations into the act which has been brought to his attention (arts. 105 and 106 of the Penal Code):

Articles 105 and 106: Authority to report

> "Any person who learns by any means whatever of the commission of an offence which is automatically prosecutable, shall report it to the judicial or police authority."

Article 106: The duty of the authority

> "The authority reponsible for receiving the report shall record in writing any details that may be useful in investigating the alleged offence."

2. Indictment

66. The Office of the Public Prosecutor

Article 67 of the Code of the Penal Procedure provides that:

> "In penal matters, the Office of the Public Prosecutor shall be represented by the Government Procurator, the public prosecutors and in the other departments by the departmental government procurators. The Government Procurator shall, in addition, have a supervisory and corrective role in respect of the officers of the Office of the Public Prosecutor, in penal matters. To that end, and without prejudice to the

establishment of the relevant organic rules he shall note the action taken by the above-mentioned officials, whenever he examines the penal files submitted to the Supreme Court of Justice for a legal opinion (art. 34, para. 4) and shall adopt the administrative measures which he deems appropriate or necessary."

Article 68

"The Office of the Public Prosecutor is responsible for initiating action to investigate major and minor offences.

Depending on the nature of the case, the Office of Public Prosecutor shall bring charges and ask for a dismissal of proceedings."

3. Bringing a court charge

67. See article 105 of the Code of Penal Procedure regarding the submission of a charge to the competent court.

Article 114: Start of inquiry proceedings

"The competent examining judge who, on the initiative of the Office of the Public Prosecutor, or through personal knowledge, or through a report which has been filed or any other similar means, has been apprised of the commission of an offence, shall promptly take all the necessary measures to clarify it."

Article 217: Obligation to testify

"The judge shall question anyone who has knowledge of the act under investigation and whose statement may be considered useful in discovering the truth. Save for the exceptions expressly provided for in the law, no one may refuse to testify (art. 178 of the Penal Code)."

Article 227: Rules governing the questioning of witnesses

"Before he makes a statement, the witness shall be informed that it is his duty to tell the truth concerning the acts about which he is being called upon to testify and shall be told of the penalties laid down in the Penal Code for perjury.

Witnesses shall be questioned about specific facts, and questions which may prevent spontaneous and honest replies shall be avoided.

Each witness shall be questioned separately regarding:

1. His name, surname, age, marital status, profession and domicile; and if he is a foreigner, the duration of his residence in the country.

2. Whether he knows the accused or the other persons who will be affected by the outcome of the trial, and whether he has any ties of kinship, friendship, enmity, or any other kind of relationship with any of them and if so to give details.

3. Any circumstances which may help to evaluate his credibility.

4. Any other facts and circumstances which may assist in determining the truth."

Article 228: Examination of witnesses: cross-examination and corrections to the record

"The parties may be present when the witnesses make their statements, without interrupting them; when they have finished their statements, the Office of the Public Prosecutor and the counsel for the defence may cross-examine the witnesses and ask for any corrections to the record which they consider necessary to support the reliability and accuracy of the statement made.

The judge, in addition to asking any questions which he deems necessary, may object to the witness answering any questions which he, the judge, considers inadmissible. The decision shall be taken in the appropriate court, without any further appeal."

Article 230: Examination

"Examination is an act ordered by the competent judge, whereby a person or a thing is subjected to an examination or questioning by the judge himself or by persons whose testimony may be useful in discovering the truth."

Article 317: The purpose of imprisonment

"In carrying out the provisions of the foregoing articles, the judge shall ensure that, imprisonment shall in no case serve to harass the prisoner but only to rehabilitate him, promote his aptitude for work and ensure that he does not commit further offences.

To that end, the documentation referred to in paragraph 2 of the previous article shall record the judge's remarks and any claims or complaints addressed to him.

If they feel that there are facts which may provide grounds for the adoption of measures outside their jurisdiction, they shall submit the file to the Ministry of Justice (today the Supreme Court of Justice) for appropriate action."

Article 14

68. As stated in the first part of this report, Uruguayan domestic legislation establishes the liability of the State to pay compensation in respect of unlawful acts or fraudulent or culpable negligence by a public official, in the exercise of his public duties or in relation to the exercise of such duties, which may cause injury to a third party. If it is established that there is a causal relationship between the injury and the unlawful act, the State shall compensate the victim or his surviving assignees, without prejudice to the right to initiate the necessary action for restitution to recover the costs of the settlement from the estate of the irresponsible public official.

Article 15

69. Since there is no specific legal definition regarding this subject in existing Uruguayan law, the general rules governing statements by the accused as established in chapter III of the Penal Code are applied.

Article 184: Identification of the declarant

> "The persons questioned in accordance with the provisions of article 123 shall be duly identified by any means which will ensure the accuracy of the information provided by them or obtained from other sources."

Article 185: Prohibition of coercion

> "Under no circumstances shall the accused or defendant be compelled to swear or to promise to speak the truth (art. 20 of the Constitution of the Republic). Nor may any form of coercion, threat or promise be used against him."

Article 186: Confession

> "Any statement by the accused at any stage of the proceedings, before the competent judge, the acknowledgement of any responsibility for or complicity in an offence, shall be considered a confession, provided that such a statement is delivered or confirmed in the presence of counsel for the defence."

70. Under the Uruguayan legal system any confession made before the police authorities is not admissible as evidence. A confession shall only be admissible if it is confirmed before the competent judge and in the presence of the defence counsel. This safeguards against any possibility of the accused having been subjected to torture and then having no legal procedure available under which to withdraw any statement he had made and from that viewpoint, the confession can only be valid as evidence that the accused was subjected to abuse and cruel treatment.

71. At any stage of the proceedings, it may be established whether the accused is being allowed a procedural opportunity to report any cruel, inhuman or degrading treatment to which he is being subjected and the trial may not proceed unless the accused has previously been questioned in the presence of his defence counsel.

Article 126: Indispensable condition for the trial

"Under no circumstances may the trial be ordered unless the accused has first been examined or unless his refusal to make a statement has been recorded.

This examination shall take place in the presence of the defence counsel, if the defendant so requests. This counsel shall be informed in advance of his appointment, through selection from a panel of court-appointed counsel available.

The hearing may be suspended for 24 hours, to enable the defence counsel who has been appointed to state his acceptance of the appointment and to appear.

The Office of the Public Prosecutor and the defence counsel may ask any questions and request any corrections to the record which they deem necessary to support the reliability and accuracy of a statement."

72. As has been said before, article 317 quoted above (see para. 67) shall apply while the sentence is being served.

73. Concerning the remedies available, article 283 of the Penal Code deserves particular attention.

Article 283: Purpose of and grounds for the review

"The remedy of review may be initiated in due course and on behalf of the accused against any sentence passed on the basis of res adjudicata in the following instances:

1. If the facts established as the grounds for the sentence are proved to be incompatible with those which provided the grounds for another irrevocable penal sentence.

2. If, after the sentence has been passed, new evidence or circumstances are brought to light, alone or in conjunction with those which were examined during the trial, which prove that the act was not committed or that it was not committed by the accused.

3. If it is proved that the sentence was passed as a result of misrepresentation or other act defined by penal law as an offence. In such a case, the evidence will consist of the sentence of guilty handed down on account of this misrepresentation or offence, unless the prescriptive period for a penal proceeding has lapsed or if it cannot proceed, in which case other means of proof may be used.

4. If appropriate, another more lenient penal law may be applied retroactively."

Article 285: Lodging of the application for review

"The application for review shall be submitted to the Supreme Court of Justice and shall include the specific reference to the facts, the exhibition of the respective pieces of evidence and a reference to the legal provisions on which it is based, otherwise it shall be declared inadmissible."

Article 288: Judgement on the review

"Having reached a decision on the review, the court may quash the sentence and order a re-examination of the case by the competent judge or it may hand down a judgement direct."

Article 290: Effect of the judgement

"If there was ground for the review, the State shall compensate the accused for the damage caused by the sentence of guilty, which was the subject of the review, without prejudice to his right of redress (arts. 24 and 25 of the Constitution of the Republic).

The proceedings shall take place in the competent court, according to the procedure prescribed in articles 590 and 594 of the Code of Civil Procedure."

Article 16

74. In outlining the general framework, in Part I of this report, the Government provided information on the substantive provisions referred to in respect of both torture and ill-treatment. Please refer to what was stated there.